In the Supreme Court of the United States.

OCTOBER TERM, 1915.

WILLIAM P. CROSS, APPELLANT,
v.
THE UNITED STATES. } No. 389.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from the judgment of the Court of Claims dismissing the petition.

Appellant was clerk of the United States District Court for the District of Rhode Island from July 1, 1907, to October 1, 1912. During this period the accounting officers of the Treasury Department disallowed the following items:

For making, by direction of the Department of Commerce and Labor, triplicate copies of original declarations of intention for naturalization, 8,110 declarations, at 3 folios each, 24,330 folios, at 10 cents each	$2,433.00
For attaching seal as required by the Department of Commerce and Labor to each of 8,110 declarations, at 20 cents each	1,622.00
Total	4,055.00

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(Finding III, Rec. 6.)

Suit was later instituted in the Court of Claims for the recovery of the amount so disallowed.

The law governing the case is found in the act of June 29, 1906 (34 Stat., p. 596, c. 3592), as follows:

> "SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.
>
> "In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions

he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk. * * *

"SEC. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

"For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

"For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars. * * *

"SEC. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment."

ARGUMENT.

It is conceded that appellant has received all fees provided for in section 13 of the act of June 29, 1906. He contends, however, that the items disallowed are outside of the said act and should be allowed under section 828, Revised Statutes (app. brief, p. 9), which provides (par. 9):

> "For a copy of any entry or record, or of any paper on file, for each folio, ten cents."

Appellant's argument is that the duplicates requested were copies of papers on file in the court, and "not in any way a part of the proceedings in a naturalization cause." (Brief, p. 9.)

It would seem too obvious to require argument that paragraph 9 of section 828, Revised Statutes, can not be invoked here, for the reason that the same is excluded by that part of section 13 of the act of June 29, 1906, as follows:

> "It shall also be the duty of the clerk of each of said courts * * * to furnish to said bureau * * * *certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.*"

The declaration of intention is certainly a "proceeding" in a "naturalization cause," and it would appear that the furnishing of certificates of the declaration of intention upon the request of the Bureau of Naturalization was simply the performance of a

duty prescribed by section 12 of the act of June 29, 1906.

By section 21 of said act appellant is prevented from demanding or receiving any additional fees in naturalization proceedings than those set forth in section 13.

Reference is hereby made to two decisions of the Comptroller of the Treasury—*Locke's case* (14 Comp. Dec., 222); *Mortimer's case* (15 Comp. Dec., 289).

The fees of public officers are dependent upon the provisions of the statute granting them and are not open to equitable construction by the courts or discretionary action on the part of officials. (*U. S.* v. *Shields*, 153 U. S., 88.) There not only being no fee provided for the service performed by this appellant, but being, as is believed, a positive prohibition in the law against his receiving any separate fee for this service, it is respectfully submitted that the decision of the lower court should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.

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